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LMOS, allows SWBT to test the loop of a customer within 60 seconds of a complaint call. This feature allows SWBT to test the condition of the customer's line moments after the customer calls in a complaint, while the customer is still on the line. This testing feature is not available in WFA.

34. SWBT's decision to place UNE circuits in WFA will also place unnecessary demands on SWBT's workforce, further jeopardizing the ability of CLECs to provide services that are comparable in quality to those offered by SWBT. Once UNE circuits providing POTS service are transferred to the WFA system, problems on those circuits will be competing for technician attention with the special circuits that traditionally have been in the WFA system in the past, such as DS1 and DS3 facilities. Problems with these high capacity services can have tremendous customer impact; for example, a problem on a DS3 facility may result in 672 lines going out of service. It is inevitable, therefore, that SWBT will seek to assign priority to any problems on these special circuits, with their multi-customer impact, over problems on CLECs' UNE POTS circuits. In addition, WFA technicians often will not have been trained for service on POTS circuits, and certainly will be unfamiliar with such circuits. The technicians providing service in the LMOS system, on the other hand, will be very familiar with POTS circuits, which are the norm in that system. Finally, the placement of POTS circuits in the WFA will substantially

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<sup>31</sup>(...continued)

in favor of resale of SWBT's services:

If AT&T wishes to provide services exactly as SWBT does for its own retail customers (including testing by SWBT via MLT), AT&T has the option of using resale to serve its customers.

Letter from Stephen Carter, SWBT, to Rian Wren, States, AT&T at 2 (April 11, 1997).

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increase the demands on a system that has in the past been reserved for a small percentage of SWBT circuits, and SWBT has made no attempt to show that it has devoted the resources and personnel necessary to maintain the quality of service in that system in the face of those increased demands.

35. SWBT's decision to place UNE circuits in WFA also creates an unnecessary restriction on the volume in which and speed by which a CLEC can provision the orders of its new customers. For every conversion of a SWBT customer to UNE platform-based service, SWBT will physically disconnect the service and install SMAS test points. This is a labor intensive activity that will substantially reduce the number of such conversions that SWBT could complete on any given day. Indeed, based on information gathered internally and also obtained from another incumbent LEC, AT&T estimates that a crew of three technicians, working full time on nothing but such conversions, would only be able to complete between 40-50 per day per central office. SWBT thus has created a bottleneck, without any technical justification, that substantially impedes the ability to convert customers from SWBT to CLECs.

36. For SWBT to provide access to UNEs at parity with its own access to those facilities, as required by the Act, SWBT must demonstrate that purchasers of UNE loop/switch combinations (plus common elements) will not be subject to interruptions of customer service that are not technically essential in order to fill those orders, that they will not be subject to nonrecurring charges to recover costs for activities that are not justified, and that those loop/switch UNE combinations will be maintained at parity with the loops and switches through which SWBT serves its customers.

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37. At bottom, SWBT's planned treatment of a CLEC's purchase of the UNE platform to win and serve customers will create two separate systems in Oklahoma -- one for SWBT's POTS customers, and one for CLEC's POTS customers being served through UNE combinations. The latter face a service interruption, unnecessary nonrecurring charges, and inferior maintenance. Against this background, SWBT's Oklahoma agreements and its SGAT offer no meaningful evidence that access to unbundled network elements will be provided on terms that are just, reasonable, and nondiscriminatory.

**IV. SWBT NEITHER PROVIDES NOR OFFERS UNBUNDLED ACCESS TO LOCAL SWITCHING**

38. The local switch is the hub of the local telecommunications network. It connects lines to lines, trunks to lines, lines to trunks, and provides features, functions, and capabilities -- including dial tone, telephone number, vertical features, signaling, access to 911 service, operator services, directory assistance, intraLATA toll, and exchange access services. To meet its checklist obligations, SWBT must provide -- but has not yet provided or offered -- unbundled access to local switching.<sup>32</sup>

**A. SWBT Has Restricted Use Of The Unbundled Switch By Denying CLECs The Right To Collect Access Charges And IntraLATA Toll Revenue.**

39. In its First Report and Order, the Commission made clear that, by purchasing an unbundled local switch, CLECs gain the right to collect all revenue arising from the use of that element. The Commission held:

We confirm . . . that section 251(c)(3) permits interexchange carriers and all other requesting telecommunications carriers, to

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<sup>32</sup> See Attachment 3 for a complete set of local switching requirements as defined by the Act.

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purchase unbundled elements for the purpose of offering exchange access services, or for the purpose of providing exchange access services to themselves in order to provide interexchange services to consumers.<sup>33</sup>

Indeed, in its discussion of the risks to the CLEC associated with the purchase of UNEs, the Commission carefully considered the availability to CLECs of all revenues that would be derived from use of the element, including access charge revenues.<sup>34</sup>

40. In its negotiations with AT&T in Oklahoma, however, SWBT has refused to allow AT&T to collect originating and terminating access charges for 800 service calls when the call is handled by AT&T using SWBT's unbundled local switching. SWBT's SGAT takes the same position.<sup>35</sup> Although the approved interconnection agreements do not address this issue, it is plain from SWBT's negotiating stance and the SGAT that SWBT will not allow these other carriers to collect 800 access charges under their agreements.

41. SWBT takes essentially the same stance with respect to terminating exchange access charges. In negotiations with AT&T in Oklahoma, SWBT has steadfastly refused to allow AT&T to collect exchange access charges for the calls terminated by AT&T using SWBT's unbundled switching. Although SWBT's SGAT suggests that a CLEC *will* be allowed to collect both originating and terminating access charges handled by an unbundled switch,<sup>36</sup> SWBT's stance in negotiations with AT&T makes clear that SWBT in fact will deny all

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<sup>33</sup> First Report and Order ¶ 356.

<sup>34</sup> See First Report and Order ¶ 334.

<sup>35</sup> SGAT, APPENDIX UNE, ¶ 12.10.2.E.

<sup>36</sup> SGAT, APPENDIX UNE ¶ 12.10.2.H.

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CLECs the ability to collect terminating access charges. (Once again, the approved interconnection agreements do not address this issue.)

42. Finally, regarding intraLATA toll revenue, SWBT's SGAT provides as follows:

Until IntraLATA Dialing Parity, all intraLATA toll calls initiated by [an unbundled local switch] Port will be routed to SWBT. The [local service provider] will pay IntraLATA toll rates for such calls. No [unbundled local switch] usage charges will apply to [the local service provider] in such event.<sup>37</sup>

The effect of this provision is that SWBT retains all revenues for intraLATA toll calls handled by a CLEC using SWBT's unbundled local switching. In its negotiations with AT&T, SWBT has refused to concede that, when AT&T (or another CLEC) has purchased the unbundled switch, it has full rights to all revenue arising from the use of the switch, including intraLATA toll revenue. The SWBT approved interconnection agreements are silent on this issue of the rights to collect intraLATA toll revenue, although it is clear, based on SWBT's position in the SGAT and in negotiations with AT&T, that it will consistently demand intraLATA toll revenues from all CLECs.

43. SWBT thus plainly cannot meet its checklist obligations while it is restricting a new entrant's right to fully use the unbundled local switch to provide, and collect the revenue from, access and intraLATA services.

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<sup>37</sup> SGAT, APPENDIX UNE ¶ 12.10.2.C.

**B. SWBT Does Not Provide, And Has Not Shown That It Is Ready To Provide, Customized Routing.**

44. When a CLEC customer purchases the unbundled switch, it obtains all features, functions, and capabilities of that switch, including customized routing.<sup>38</sup> The Commission has concluded that customized routing, "which permits requesting carriers to designate the particular outgoing trunks that will carry certain classes of traffic originating from the competing provider's customers, is technically feasible in many LEC switches."<sup>39</sup> The burden is on the incumbent LEC to prove to a state commission that customized routing in a particular switch is not technically feasible.<sup>40</sup>

45. SWBT does not today provide customized routing, and has provided no evidence that it is ready and able to do so. With one exception, none of SWBT's approved interconnection agreements even mentions customized routing. Thus, although the Sprint agreement requires a separate charge for customized routing, it provides that "SWBT will charge Sprint for Customized Routing in accordance with the final and effective SWBT/AT&T arbitrated agreement or the SWBT generic cost docket."<sup>41</sup> Because there is not a "final and effective

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<sup>38</sup> First Report and Order ¶ 412 (finding that, in unbundling its local switching capability, an incumbent LEC must provide all "technically feasible customized routing functions provided by the switch.")

<sup>39</sup> First Report and Order ¶ 418. The AT&T Arbitration Order in Oklahoma also requires customized routing where technically feasible. Arbitration Order at 32.

<sup>40</sup> First Report and Order ¶ 418.

<sup>41</sup> See Sprint Agreement, Attachment 6, ¶¶ 5.2.3.1 - 5.2.3.3.

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SWBT/AT&T arbitrated agreement," or a pending cost docket in Oklahoma, the Sprint agreement confirms that customized routing is not now available from SWBT.<sup>42</sup>

46. Moreover, in current Oklahoma contract negotiations between AT&T and SWBT, SWBT has taken the position that pricing for customized routing was outside the scope of the arbitration and will not be determined in the cost docket. Thus, from SWBT's perspective, there will be no determination of customized routing pricing in the foreseeable future. Moreover, in Texas negotiations, SWBT has advised AT&T that customized routing arrangements are in such a developmental stage that no pricing for them is yet available. Without prices for customized routing, SWBT cannot logically show that it is pricing or offering access to unbundled switching at rates that "are just, reasonable, and nondiscriminatory."<sup>43</sup>

47. Like the Sprint agreement, the SGAT contains no pricing information for customized routing,<sup>44</sup> although SWBT does intend to charge for it. The SGAT also contains no statement of any sort regarding when customized routing will actually be available to CLECs, and SWBT's application to the Commission fails to address this matter.

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<sup>42</sup> The Sprint agreement provides no indication when customized routing will be available.

<sup>43</sup> Act, Section 251(c)(3) (emphasis added). In addition, SWBT's attempt to impose additional charges for customized routing is unjustified. Because customized routing is part of the features of the switch, the price of the unbundled switch should include customized routing as part of the price. It is worth noting that SWBT's position to charge for customized routing separately from the unbundled switch is not universal. BellSouth, for example, has agreed that customized routing will be provided as part of local switching, at no added charge.

<sup>44</sup> See SGAT, APPENDIX PRICING Schedule at 2.

**C. SWBT's Interconnection Agreements And SGAT Effectively Preclude Access To DS1 Trunk Ports, And Thus Exclude A Critical Part Of Unbundled Local Switching.**

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48. DS1 trunk ports are trunk-side facilities that fall within the Commission's definition of the local switch,<sup>45</sup> and are present in all SWBT digital switches. The provision of DS1 trunk ports in unbundled local switching is critical. DS1 trunk ports are necessary to connect the local switch to DS1 loops, a loop type the Commission specifically recognized as encompassed in the definition of the unbundled local loop.<sup>46</sup> Because DS1 trunk ports are required to use DS1 loops, they are needed to serve a substantial percentage of business customers. Moreover, without DS1 trunk ports, customized routing is unavailable, and so, for example, a CLEC would be unable to obtain call routing to its own operator service and directory assistance platform.

49. Despite their critical nature, SWBT has not committed itself under any of the interconnection agreements, or under the SGAT, to offer DS1 trunk ports for sale at any known price. The only interconnection agreement that even mentions DS1 trunk ports is the Sprint agreement. Although the SWBT/Sprint agreement defines DS1 trunk ports as one of the "interfaces to loops" that will be provided,<sup>47</sup> the pricing schedule does not include any price for the DS1 trunk port or otherwise list the port.<sup>48</sup> Thus, SWBT has not complied with Section

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<sup>45</sup> See 47 C.F.R. § 51.319(c)(1)(I)(B).

<sup>46</sup> First Report and Order ¶ 380.

<sup>47</sup> See Sprint Agreement Attachment 6, ¶ 5.3.1.3.

<sup>48</sup> Sprint Agreement, Attachment 6, Appendix Pricing-UNE at 48-49 (offering prices for four other types of switch ports, but not for DS1).



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251(c)(3), which requires access to UNEs "on rates ... that are just, reasonable, and nondiscriminatory."

50. The SWBT SGAT does not even list DS1 trunk ports as among the trunk ports offered, let alone include a price for them, as SWBT acknowledges.<sup>49</sup> SWBT's failure to offer DS1 trunk ports in the SGAT is remarkable, given that these trunk ports are present in all of SWBT's digital switches and given that the SGAT itself recognizes that DS1 trunk ports are necessary for customized routing.<sup>50</sup> SWBT states in its Section 271 submission that the DS1 trunk port is not included in its SGAT.<sup>51</sup>

**D. SWBT Has Failed Even To Show That It Offers Local Switching.**

51. SWBT has pledged in its interconnection agreements,<sup>52</sup> and in its SGAT,<sup>53</sup> to provide local switching to CLECs. SWBT, however, has never provided local switching to any CLEC, either separate from or in combination with other network elements. AT&T has requested local switching as part of combinations with other UNEs. To our knowledge, SWBT

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<sup>49</sup> See SGAT, APPENDIX UNE; ¶ 6; SGAT, APPENDIX Pricing Schedule at 2; Affidavit of William C. Deere On Behalf Of Southwestern Bell Telephone Company, ¶79 ("Deere Affidavit").

<sup>50</sup> See SGAT, APPENDIX UNE, ¶ 17.2.

<sup>51</sup> See Deere Affidavit ¶79.

<sup>52</sup> See Sprint/SWBT Agreement, Appendix UNE ¶ 5; Brooks/SWBT Agreement Appendix UNC at 1; USLD/SWBT Agreement Appendix UNC at 1; ICG/SWBT Agreement ¶ 9.1.

<sup>53</sup> See SGAT, APPENDIX UNE ¶ 5.

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has not commercially tested an unbundled local switch. SWBT's pledge, without more, does not satisfy the requirement that it provide -- or even offer -- unbundled local switching.<sup>54</sup>

52. The unbundling of a local switch, unlike the unbundling of certain other network elements, raises certain complex technical issues, especially in the area of recording billing information for multiple CLECs. These technical difficulties have led SWBT to admit in negotiations with AT&T it will not be able to provide the data necessary to bill terminating access anytime before January 1998.<sup>55</sup>

53. SWBT thus has not made any showing that it can provide unbundled switching in a commercial environment. Indeed, SWBT has not even attempted to make such a showing.

**V. SWBT NEITHER PROVIDES NOR OFFERS UNBUNDLED ACCESS TO LOOPS**

54. Section 271(c)(2)(B)(iv) requires that SWBT fully implement "[l]ocal loop transmission from the central office to the customer's premises, unbundled from local switching or other services." The Commission has defined an unbundled loop as a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and the network interface device at the customer premises. In addition, Section 271(c)(B)(ii) requires access to this unbundled element to be "[n]ondiscriminatory" and "in accordance with the requirements of sections 251(c)(3) and 252(d)(1)." SWBT has not complied with these obligations.

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<sup>54</sup> See Section 271(c)(2)(B)(vi).

<sup>55</sup> Similarly, Bell Atlantic has admitted to AT&T it will not be able to provide the data necessary to bill terminating access any time sooner than August 1, 1997.

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**A. SWBT Restricts Access To Loops Serviced By Integrated Digital Loop Carrier.**

55. SWBT has not fully unbundled the local loop. In both the SGAT and the Sprint agreement, SWBT reserves the right to preclude CLEC access to those unbundled loops that are behind Integrated Digital Loop Carrier (IDLC) where other facilities do not currently exist.<sup>56</sup> (The other interconnection agreements are silent on this issue.) IDLC is a technology that enables the telecommunications carrier to concentrate more loops onto the same number of physical paths. Essentially, a loop that is "seized" becomes a time slot on the facility side of the IDLC rather than a physical path. This lack of a distinct physical appearance is maintained directly into the SWBT local switch. SWBT's reservation of the right to decline access to unbundled loops serviced by IDLC makes a significant percentage of SWBT loops, and hence customers, completely unavailable to CLECs.<sup>57</sup>

56. Such a reservation is inconsistent with the requirement that SWBT provide CLECs with access to unbundled loops, as the Commission held in its First Report and Order:

We further conclude that incumbent LECs must provide competitors with access to unbundled loops regardless of whether the incumbent LEC uses integrated digital loop carrier technology, or similar remote concentration devices, for the particular loop

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<sup>56</sup> See Sprint Agreement, Attachment 6, ¶ 4.4; SGAT, APPENDIX UNE ¶ 4.4. The SGAT is in fact more restrictive than the Sprint agreement, in that it provides that SWBT will assure provision of an unbundled loop currently serviced by IDLC only if an alternate loop is available. The Sprint agreement, on the other hand, provides that SWBT will assure the provision of an unbundled loop only if an alternate loop is available or if UDLC is available.

<sup>57</sup> In negotiations with AT&T, SWBT has represented that approximately 8% of its customers in its entire region are serviced by IDLC. Moreover, it is our understanding that the majority of the customers serviced by IDLC in Oklahoma have no alternate facilities currently available, giving SWBT the right under the Sprint agreement and SGAT to decline to provide the unbundled loop for these customers.

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sought by the competitor. IDLC technology allows a carrier to aggregate and multiplex loop traffic at a remote concentration point and to deliver that multiplexed traffic directly into the switch without first demultiplexing the individual loops. If we did not require incumbent LECs to unbundle IDLC-delivered loops, end users served by such technologies would not have the same choice of competing providers as end users served by other loop types. Further, such an exception would encourage incumbent LECs to "hide" loops from competitors through the use of IDLC technology.<sup>58</sup>

The Commission also found "that it is technically feasible to unbundle IDLC-delivered loops."<sup>59</sup>

SWBT thus cannot, consistent with the First Report and Order, restrict access to loops serviced by IDLC.

57. Despite this clear command in the First Report and Order, SWBT does not guarantee access to loops serviced by IDLC. The Sprint agreement provides access to IDLC-serviced loops only if two of four technically feasible unbundling options currently are available, an alternate physical loop and universal digital loop carrier.<sup>60</sup> The SGAT provides access to IDLC-serviced loops only if one of the four options currently is available, the alternate physical

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<sup>58</sup> First Report and Order ¶ 383 (emphasis added).

<sup>59</sup> First Report and Order ¶ 384.

<sup>60</sup> Sprint Interconnection Agreement, Appendix UNE, Paragraph 4.4. As noted above, there are four different alternatives for making loops behind the IDLC accessible to new entrants. First, SWBT can make an alternate physical loop available to the new entrant that does not go through the IDLC. Second, SWBT can move the customer's loop from the IDLC to an alternate UDLC that parallels the IDLC. Third, SWBT can install a central office terminal (COT) on the end office side of the IDLC connection to make the loops available for unbundling. Essentially, this technology option would "convert" the IDLC into UDLC making the loops accessible to new entrants. Fourth, SWBT could install new technology that recently became available that would allow it to unbundle the IDLC at the remote IDLC terminal. All four of these means of creating full access to unbundled loops behind IDLC are technically feasible.

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loop.<sup>61</sup> The First Report and Order, however, permits no such restriction on access to IDLC-serviced loops.<sup>62</sup>

58. Under the Sprint agreement and SGAT, once SWBT determines that alternative arrangements currently are unavailable to obtain a particular IDLC-serviced loop, the only recourse for the CLEC is to request alternative arrangements through the "Special Request" or "Bona Fide Request" process.<sup>63</sup> These "Special Request" and "Bona Fide Request" processes allow for delays of up to 130 days, and thus effectively bar the CLEC from any reasonable access to the IDLC-serviced loop.

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<sup>61</sup> SGAT, APPENDIX UNE, ¶ 4.4. It is worth noting that, more often than not, no alternate physical loops will, in fact, be available where existing loops are serviced by IDLC. Consequently, the alternate-physical-loop option will generally not be a viable alternative.

<sup>62</sup> The Oklahoma Arbitration Order directed that SWBT provide "unbundled loop through loop distribution, loop concentrator/multiplexor, and the loop feeder facilities whenever it is technically feasible, as may be determined at such time that AT&T becomes a facilities-based provider." Oklahoma Arbitration Order at 10. The reference to the "multiplexer/loop concentrator" concerns the new IDLC currently on the market that already allows for unbundling. Regarding the requirement that AT&T be a facilities-based provider before receiving unbundled IDLC-serviced loops, it is worth recognizing that no carrier would have any need for unbundling of IDLC-serviced loops alone unless the carrier was using its own local switching facilities. IDLC itself does not pose any technological barrier if a CLEC provides service by ordering both the IDLC-serviced loop and the unbundled local switch together.

<sup>63</sup> Sprint/SWBT Agreement, Appendix UNE ¶ 4.4 (discussing "Special Request" process); SGAT, APPENDIX UNE ¶ 2.16 (discussing "Bona Fide Request" process). The "Special Request process" requires that, once it receives a request for a particular UNE from a CLEC, SWBT has 10 days to acknowledge receipt of the request. SWBT then has 30 days to respond preliminarily to the request. Assuming that SWBT determines, in this preliminary response, that it is technically feasible to provide the UNE, then SWBT has up to an additional 90 days to provide the CLEC with a quote on the request. See Sprint/SWBT Agreement, Appendix UNE ¶ 2.19. The SGAT's "Bona Fide Request" process provides the same timetable for completion as the Sprint agreement. See SGAT, APPENDIX UNE ¶ 2.16.

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59. The consequence of SWBT's failure to provide full access to unbundled loops serviced by IDLC extends beyond those customers served by such loops. A CLEC can win a customer from the incumbent LEC without knowing whether that customer uses an IDLC-serviced loop. The SWBT agreements provide that when a CLEC has requested an IDLC-serviced loop, SWBT will notify the CLEC within 48 hours of the request whether arrangements can be made to move the requested loop to the CLEC. If no alternative facility is currently available, the customer must remain with the incumbent LEC (barring an attempt to proceed with the potentially lengthy "Special Request" process). The CLEC thus can win the customer on Friday and on Tuesday learn from SWBT that the CLEC will not be able to access the unbundled loop.<sup>64</sup> The CLEC will then have to convey to the customer its inability to meet his or her request for service, which will lead to customer confusion and ill-will toward the CLEC, and leave that customer with no alternative for local service other than resale of SWBT service. As a result, a CLEC will not have an understanding of its costs and provisioning intervals until after its customers place their orders and SWBT informs the CLEC if the unbundled loop is available.

60. Another potential customer-access restriction arising from SWBT's failure to provide full access to unbundled loops serviced by IDLC arises from SWBT's treatment of the UNE platform. There is no technological impediment to a CLEC serving an IDLC-serviced customer through the purchase of the UNE platform. The only difficulties from IDLC-serviced loops arise when the CLEC orders an unbundled loop to connect with its own local switch. SWBT's decision to insert SMAS points on every unbundled loop, including those that are part of

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<sup>64</sup> SGAT, Appendix UNE ¶ 4.4 explains that there will be a two day exploration period by SWBT to determine if there is an alternate method for providing physical access to the unbundled loop.

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the platform, *see supra* 28, however, will restrict access to IDLC-serviced customers, even when the CLEC orders both the unbundled loop and the unbundled local switch. SMAS points must be inserted on the individual loop to enable the testing of that loop in the WFA system. However, IDLC-serviced loops do not appear at the local switch as individual loops, but rather as part of a DS1. Additionally, because IDLC randomly selects the channel of the DS1 to use on a call by call basis for the loop because of its concentration function, there is no predictable way for SWBT to insert the SMAS point on the correct channel of the DS1 to test the unbundled loop being used as part of the platform. The end result is that SWBT's decision to place all UNE circuits in WFA using a SMAS point for testing will bar access to customers using IDLC-serviced loops, even when the CLEC orders the entire UNE platform.

**B. SWBT Has Established Discriminatory Loop Provisioning Intervals**

61. In its agreements with Sprint, Brooks Fiber, and ICG, SWBT undertakes to provide loops on the following timetables: for "new loops" -- i.e., unbundled loops for which there is no pre-existing customer -- SWBT has stated that the time intervals will be 5 business days for an order of 1-10 loops, 10 business days for an order of 11-20 loops, and in any larger order the time frames would be subject to negotiation.<sup>65</sup>

62. These provisioning intervals are not linked to the real performance that SWBT provides to its own customers, and, indeed, appears to be longer than SWBT is required to provide its own customers under the Oklahoma service standards, which provide that SWBT

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<sup>65</sup> Sprint/SWBT Agreement Attachment O & P-UNE ¶ 8.5 at 10; Brooks/SWBT Agreement ¶ XVII.A.3. at 19; ICG/SWBT Agreement ¶ 27.1.3 at 45. The USLD/SWBT agreement appears to be silent on the issue of the provisioning intervals for loops.

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must provision a customer's order for new service within four days 95% of the time.<sup>66</sup> The provisioning intervals provided in the interconnection agreements, therefore, are discriminatory and quite literally give SWBT the ability to manage the rate at which its competitors grow. Such power imposes intolerable burdens on CLECs, and is antithetical to the development of competition.

63. In the marketplace, the CLECs will be held accountable by customers if they are not able to provide service on a timely basis, and any competitor that is unable to commit to a provisioning date with prospective customers will not survive in the marketplace. SWBT knows this and must be similarly accountable to its competitor/customers.

**VI. SWBT NEITHER PROVIDES NOR OFFERS UNBUNDLED ACCESS TO TRANSPORT**

64. The Commission has held that "incumbent LECs must provide unbundled access to dedicated transmission facilities between LEC central offices or between such offices and those of competing carriers ... [and] may not limit the facilities to which such interoffice facilities are connected, provided such interconnection is technically feasible, for the use of such facilities."<sup>67</sup> Multiplexing is required to interconnect lower bandwidth dedicated transport to higher bandwidth dedicated transport, such as interconnecting DS1 to DS3. Multiplexing also is required for CLECs to be able cost-effectively to interconnect unbundled local loops to dedicated transport. To satisfy the requirement that it provide nondiscriminatory "access to dedicated

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<sup>66</sup> Okla. Code § 165:55-13-1.

<sup>67</sup> First Report and Order ¶ 440.



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transmission facilities,"<sup>68</sup> SWBT must therefore establish that it is providing CLECs the same full multiplexing functionality for dedicated transport that it provides to itself.<sup>69</sup> SWBT has not made and cannot make such a showing.

65. The only SWBT interconnection agreement that even purports to offer dedicated transport as an unbundled element is the Sprint agreement.<sup>70</sup> That agreement, however, limits the provision of multiplexing to the following: "Sprint will use multiplexing/demultiplexing when connecting a DS1 or greater bandwidth Dedicated Transport element to a SWBT analog end office switch."<sup>71</sup> No other permitted use of multiplexing is provided in that agreement.<sup>72</sup> Moreover, in negotiations with AT&T, SWBT has taken the position that, unless multiplexing is specifically identified in an agreement as part of what is being offered in conjunction with dedicated transport, then SWBT is under no obligation to provide multiplexing. SWBT also has taken the position that multiplexing is not included within the definition of any unbundled network element and that SWBT therefore has no obligation under the Act to provide multiplexing to CLECs as part of dedicated transport or any other element.

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<sup>68</sup> First Report and Order ¶ 440.

<sup>69</sup> In its First Report and Order, ¶ 444, the Commission explicitly required that "incumbent LECs ... offer [digital cross-connect system] capabilities," which is possible only with the use of multiplexing. Plainly, the Commission would not have required that an incumbent LEC provide digital cross-connect system capabilities unless the Commission also anticipated that the LEC would provide multiplexing.

<sup>70</sup> See Sprint Agreement Attachment 6, ¶ 8.2.

<sup>71</sup> Sprint Agreement Attachment 6, ¶ 8.2.1.5.1.

<sup>72</sup> The SGAT also offers certain dedicated transport as an unbundled element. SGAT, APPENDIX UNE ¶ 8.2. The SGAT is silent, however, on the availability of multiplexing.

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66. SWBT's interconnection agreement with AT&T in Texas includes similar dedicated transport provisions, including the multiplexing provision, as are in the Oklahoma Sprint agreement.<sup>73</sup> At the time AT&T entered into the Texas agreement, it understood that the general provision of dedicated transport in that agreement included the provision of full multiplexing capabilities. However, SWBT subsequently took the position that the dedicated transport provisions in the Texas agreement did not require it to provide multiplexing to AT&T.

67. It was not until post-arbitration negotiations in Texas that AT&T was informed of SWBT's position that multiplexing need not be provided under the Act. Since then, AT&T has presented this issue to the Kansas and Arkansas state commissions. In both states, the arbitrators have held that SWBT is required to provide multiplexing as part of dedicated transport to the same extent that SWBT provides multiplexing to itself.<sup>74</sup> (AT&T was not able to present this issue in its arbitration in Oklahoma, because it did not realize at that time that SWBT construed multiplexing to be distinct from dedicated transport and outside the Act.)<sup>75</sup>

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<sup>73</sup> See SWBT/AT&T Texas Agreement, Attachment 6, ¶ 8.2.

<sup>74</sup> In the Kansas Arbitrator's Decision in the AT&T and SWBT arbitration, the Arbitrator found that "SWBT is required to provide all technically feasible types of multiplexing, demultiplexing, grooming, DCS bridging, broadcast, test and conversion features to the extent such services and features are available to SWBT." Kansas Arbitration Order at 45. In Arkansas, the Arbitrator reached the same conclusion and rejected SWBT's attempt to construe the Commission's Order to limit SWBT's obligation to provide multiplexing-type functionality to the DCS functionality provided under tariffs to interexchange carriers. Arkansas Arbitration Order at 31.

<sup>75</sup> In its negotiations with AT&T in Oklahoma, SWBT has offered to provide certain multiplexing functionality, but has declined to allow the prices it has set for multiplexing to be included in the permanent cost proceedings in Oklahoma and has declined to provide AT&T with cost information to support these prices.

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68. SWBT, therefore, has impermissibly restricted the type of multiplexing available in the Sprint agreement, and does not even offer to provide multiplexing in its other interconnection agreements or its SGAT. Plainly, SWBT restrictions on multiplexing are discriminatory, because SWBT does not operate under these same restrictions. For example, SWBT currently uses multiplexing to connect DS1 data circuits for business customers to higher speed DS3 dedicated transport, thus resulting in significant cost savings for SWBT. SWBT's interconnection agreements and SGAT do not provide CLECs with the same opportunity to provide this service to their business customers.

69. Nor may SWBT point to the "Special Request" process,<sup>76</sup> or "Bona Fide Request" process,<sup>77</sup> to cure this deficiency in its interconnection agreements and SGAT. The Special Request and Bona Fide Request processes each allow for delays of as much as 130 days before the requested UNE will be provided, if it is provided at all.<sup>78</sup> Obviously, such a process does not provide, even remotely, for the prompt provision of multiplexing. A potential delay of 130 days for the delivery of such a standard feature of dedicated transport is wholly unreasonable.

70. By limiting the use of multiplexing in unbundled dedicated transport, SWBT has failed to provide the nondiscriminatory access to local transport that the competitive checklist requires.

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<sup>76</sup> See Sprint/SWBT Agreement § 2.19.

<sup>77</sup> SGAT, APPENDIX UNE ¶ 2.16.

<sup>78</sup> See Sprint/SWBT Agreement, Attachment 6, ¶ 2.19; SGAT, APPENDIX UNE, ¶ 2.16; *see also supra* note 63 (discussing specific timetables allowed by Special Request and Bona Fide Request processes).

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**VII. SWBT NEITHER PROVIDES NOR OFFERS UNBUNDLED ACCESS TO DARK FIBER IN OKLAHOMA**

71. Not one of SWBT interconnection agreements in Oklahoma offers CLECs access to SWBT's "dark fiber," that is, fiber optic transmission media that has been deployed by SWBT but currently has no electronics on it. Nor does the SGAT contain any such offer. In the First Report and Order, the Commission declined to address dark fiber unbundling, citing insufficient information, and stated that it would continue to review and revise its rules in this area.<sup>79</sup> The Commission thus left the issue whether dark fiber should be considered a required unbundled element for the states individually to consider.<sup>80</sup>

72. Since that time, SWBT has remained unwilling to make dark fiber available except as ordered by regulatory authorities. AT&T has requested unbundled access to dark fiber, and presented the issue for arbitration in each of the five states where SWBT is the incumbent LEC. Each state that has completed an arbitration, including Oklahoma, has ruled that SWBT must unbundle at least some dark fiber, subject to conditions that vary from state to state.<sup>81</sup> For example, in Kansas the Arbitration Order directed that SWBT "must allow AT&T

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<sup>79</sup> First Report and Order ¶ 450.

<sup>80</sup> See First Report and Order ¶ 243 (finding that states can add to the list of required unbundled elements).

<sup>81</sup> See Texas Arbitration Award at 4, 6; Order Regarding Unresolved Issues, Cause No. PUD 960000218 at 4 (Oklahoma Corporation Commission, December 12, 1996); Missouri Arbitration Order at 10, 11. In both Kansas and Arkansas, arbitrators have ruled that SWBT must offer access to dark fiber. See Kansas Arbitration Order at 42; Arkansas Arbitration Order at 28.

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access to SWBT's 'dark fiber,'" based on the ground that "it is in the public interest and in the interest of competition to permit AT&T access to unused transmission media."<sup>82</sup>

73. The opportunity to purchase or lease dark fiber will reduce the costs and time required for CLECs to provide facilities-based local service. As the Commission itself has recognized, "[r]equiring new entrants to duplicate unnecessarily even a part of the incumbent's network could generate delay and higher costs for new entrants, and thereby impede entry by competing local providers and delay competition, contrary to the goals of the 1996 Act." First Report and Order, ¶ 286. This language was cited by the Arkansas Arbitrator in support of her recent ruling that dark fiber must be unbundled. See Arkansas Arbitration Order at 27.<sup>83</sup> The Arbitrator concluded that SWBT "could provide no credible reason why it is not technically feasible to provide dark fiber as a UNE as it has been ordered to do in three other states."<sup>84</sup> Given the record that has been developed through these state arbitrations supporting the feasibility and benefits of dark fiber access, and given the consistent rulings that require dark fiber unbundling throughout SWBT's local service territory, SWBT should not be found to have met the checklist requirement of providing UNE access on terms that are nondiscriminatory, just, and reasonable, until it provides access to its dark fiber. It has not done so in Oklahoma.

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<sup>82</sup> See Kansas Arbitration Order at 42.

<sup>83</sup> The Arbitrator added that the unbundling of dark fiber would benefit the incumbent LEC as well -- by generating revenue from unused assets, and the reducing the risk of stranded investment in excess capacity. See Arkansas Arbitration Order at 27.

<sup>84</sup> *Id.*

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**VIII. SWBT NEITHER PROVIDES NOR OFFERS COLLOCATION FOR  
INTERCONNECTION AND UNE ACCESS IN ACCORDANCE WITH THE ACT**

74. Under Section 252(c)(6) of the Act, an incumbent LEC has the duty "to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the [LEC]." Collocation is central to the CLEC's ability to access unbundled elements or interconnect with the incumbent LEC's network. Additionally, construction intervals for outside plant facilities are integrally linked with and dependent upon the completion of the collocation. Clear descriptions of what SWBT intends to provide and dependable schedules for completion of collocation are therefore critical.

75. CLECs will not make collocation decisions lightly or in isolation. The CLEC's decision to collocate in a LEC central office generally means making an investment measured in millions of dollars. Indeed, the cost for collocation can be a significant determinant in the financial viability of a small CLEC at start-up.

76. Against this backdrop, the physical collocation provisions of SWBT's interconnection agreements in Oklahoma do not meet the requirement that collocation be provided "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory." Section 252(c)(6). In the Brooks interconnection agreement, the entire section on physical collocation reads as follows: "SWBT will provide to Brooks, at Brooks' request, physical collocation space under the same terms and conditions available to similarly situated carriers at

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the time of such request."<sup>85</sup> The Sprint interconnection agreement is similarly vague: "SWBT will provide Physical Collocation Interconnection on nondiscriminatory terms and conditions at the time Sprint requests such interconnection."<sup>86</sup>

77. The collocation provisions in these interconnection agreements provide entirely insufficient detail.<sup>87</sup> In order for a CLEC to be in a position to make investment decisions regarding collocation, and to be able to conduct any advance business planning in this important area, SWBT must, at a minimum (i) make a firm commitment on the timing of SWBT's response to a CLEC's request for physical collocation; (ii) make a commitment on the length of time it will take to prepare the collocation cage for telecommunications equipment; (iii) provide some reasonable parameters for estimating what the non-recurring costs for physical collocation will be; and (iv) provide some firm commitments as to the monthly cost for the collocated space. SWBT has made none of these commitments in its interconnection agreements.

78. SWBT's SGAT does not resolve these collocation issues. The SGAT provides: "SWBT will provide to CLEC at CLEC's request, physical collocation under the same terms and conditions available to similarly situated carriers at the time of such request and in a

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<sup>85</sup> Brooks/SWBT Agreement, § II.B.3. The USLD interconnection agreement contains the same language. USLD/SWBT Agreement, § II.B.3.

<sup>86</sup> Sprint/SWBT Agreement Attachment NIM ¶ 6.

<sup>87</sup> In Oklahoma, the Administrative Law Judge specifically found that "SWBT is not providing ... a process for providing collocation" in such a manner as to be "easily and equally accessible, on commercially operational terms and on equal terms to all." Report and Recommendation Of The Administrative Law Judge, Cause No. PUD 970000064 35-36 (April 21, 1997). This factual ruling by the ALJ was not challenged by the full Commission in its order to approve SWBT's Section 271 application.

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manner consistent with Commission Cause No. PUD 960000218.”<sup>88</sup> The reference is to the arbitration proceeding between AT&T and SWBT in Oklahoma, which concluded that SWBT must "provide for physical collocation ... necessary for interconnection or access to unbundled network elements," and which permitted SWBT "to price its physical collocation arrangements on a case-by-case basis." The Arbitration between AT&T and SWBT thus reflects generally SWBT's obligation to provide physical collocation, but left the crucial issue of price to a case-by-case approach. The SGAT thus remains improperly vague on the subject of collocation.

79. The need for detailed procedures and prices in place for collocation is shown by the experience of Brooks Fiber in Oklahoma. In its comments to the OCC, Brooks stated as follows regarding its collocation experience with SWBT:

Brooks is not yet in a position to begin utilizing SWBT's unbundled loop facilities in Oklahoma. This is because Brooks will interconnect SWBT's unbundled loops to Brooks' network through collocations (primarily physical collocations) being deployed at various SWBT central offices . . . , and to date none of these collocations has been completed. Brooks has had collocation applications in process for Oklahoma City and Tulsa central offices since as early as June, 1996, but the process has taken significantly longer than what Brooks had expected and longer than what Brooks believes reasonably should have been required for completion. It is Brooks' opinion that these delays have resulted, in significant part, from an SWBT collocation process which Brooks has found to be too inflexible to permit the continuous, interactive communications which are necessary for expeditious processing of technically intricate engineering and construction projects such as these.<sup>89</sup>

80. Moreover, one cannot simply hope that SWBT's vague pledges in this area will result in reasonable, pro-competitive prices at a later time. When AT&T finally received

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<sup>88</sup> SGAT, ¶ II.B.2.

<sup>89</sup> Initial Comments Of Brooks Fiber Communications Of Oklahoma, Inc. and Brooks Fiber Communications Of Tulsa, Inc., at 3-4 (footnotes omitted).



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quotes from SWBT for collocation in Dallas, it learned that SWBT was demanding on average \$550,000 per 400 square foot collocation cage. SWBT has refused to give AT&T any specific cost support for its pricing.

81. Other incumbent LECs, such as NYNEX and PacTel, have been able to provide AT&T and other carriers with detailed information on what locations are available for collocation, the various non-recurring costs associated with physical collocation, and the monthly costs for the collocated space. SWBT must do at least the same if it is to meet its duties under the Act in this regard.

82. As the experience of Brooks and AT&T show, the problems associated with SWBT's vague implementation of physical collocation are real and will significantly inhibit the development of facilities-based competition in Oklahoma. A new entrant cannot be expected to make a significant capital investment in a market not knowing when that capital can be put to use, how much it will cost to put the capital in place, or even whether the space will be available to invest the capital. SWBT's collocation provisions, therefore, are wholly insufficient to satisfy the competitive checklist.

**IX. SWBT NEITHER PROVIDES NOR OFFERS INTERCONNECTION  
IN ACCORDANCE WITH THE ACT**

83. Item (i) of the competitive checklist requires that an incumbent LEC provide "interconnection in accordance with the requirements of section 251(c)(2) and 252(d)(1)." Section 271(c)(2)(B)(I). Under Section 251(c)(2), interconnection must be provided for transmission and routing of telephone exchange service and exchange access. Interconnection must be provided at any technically feasible point within the incumbent LEC's network, at least